

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK
RATIONALIZATION SERVICE CHANGES, 2012

DOCKET No. N2012-1

**OPPOSITION OF UNITED STATES POSTAL SERVICE TO AMERICAN
POSTAL WORKERS UNION, AFL-CIO, MOTION TO COMPEL RESPONSES
TO INTERROGATORIES (APWU/USPS-T6-28, 29, 31 THROUGH 33 AND 36)**
(April 20, 2012)

On April 6, 2012, the American Postal Workers Union (APWU), AFL-CIO,
submitted the following interrogatories to the United States Postal Service:

APWU/USPS-T6-28. State separately the number of PVS routes and the number of HCR routes in each of the following categories:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-29. For each of the following types of routes, state the average miles per route and the average cost per route for PVS routes and, separately, for HCR routes:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-30. You have testified (page 5, line 3) that: “The long haul network refers to transportation by HCR providers that connects postal facilities more than 300 miles apart.” What is the basis for using 300 miles for such segmentation – is it cost or operational limitations? Is this dividing line used because transportation between postal facilities that are less than 300 miles apart is less suitable for HCR providers than other, longer routes?

APWU/USPS-T6-31. You testified (p. 5, line 9) that: “Generally, a truck run that is routinely less than sixty (60) percent full is directed to a consolidation facility so that the Postal Service can take full advantage of the truck’s carrying capacity.”

- a. Is the 60% full designation of truck utilization by Mail Transfer

Equipment (MTE) or by actual mail volume?

b. Does the 60% full designation include empty MTE – that is if a full truck is carrying 50% of MTE that are fully laden and 20% of MTE that are empty, does this load run direct or through consolidation point?

c. Has the USPS every engaged in estimating the cube utilization of routes by actual mail cube (not MTE) as a percentage of vehicle cube? If yes, provide examples.

d. What is the basis for using 60 percent for such decisions – how is the type and size of truck factored into such decision process, and how is the costing adjusted if a smaller truck can be used that provides for 80 percent or 100 percent utilization and reduces operating cost?

APWU/USPS-T6-32. For each of the following types of routes, state how many trucks are directed for consolidation in each category, and state what percentage of trucks in category are directed for consolidation:

- Inter-Area
- Inter-Cluster
- Inter-P&DC
- Intra-P&DC

APWU/USPS-T6-33. On the limited number of plants where studies have been conducted, what is the distribution of cube utilization of vehicle dispatch of Inter- P&DC routes in the following ranges?

- 0-25%
- 21-50%
- 51-75%
- 76-100%

APWU/USPS-T6-34. Since the new Inter-P&DC trips illustrated in Figure 2 of your testimony will be longer than the trips in Figure 1 of your testimony on nine (9) of the ten (10) current routes, has this been accounted for in the potential savings of consolidation?

APWU/USPS-T6-35. Did the studies conducted account for both length of haul and cube utilization with actual plant dispatches (e.g. If all plant dispatches in Figure 1 of your testimony from A to C are 100% then in the consolidated plant scenario in Figure 2 of your testimony, every one of those trips would be circuitously routed from A to D and then the stem miles to the area formerly serviced by C to determine savings?

APWU/USPS-T6-36. You testified (p. 9, line 5) that: “As a result (of Plant Consolidation), the Postal Service will be able to increase the capacity utilization of trucks that operate between plants.” Does this savings percentage account for current cube utilizations and circuitous routing?

APWU/USPS-T6-37. You testified (Page 15, line 3) that: “air transportation will increase by approximately 124 million pounds annually over current mail volumes transported by air.”

- a. What is the additional weight of mail containers associated with this extra mail volume?
- b. What is the current volume of mail transported by air?
- c. How does the cost of air transportation compare with ground transportation on a per pound basis?¹

The Postal Service filed an objection on April 16, 2012, observing that the interrogatories were filed after the expiration of the February 24, 2012, deadline for the filing of discovery against Postal Service witnesses.² The Postal Service further observed that APWU had offered no explanation for why it could not have submitted these interrogatories prior to that deadline or why it should be permitted to unilaterally extend discovery on the Postal Service’s direct case.

On April 18, 2012, APWU filed its Motion to Compel Responses to Interrogatories APWU/USPS-T6-28, 29, 31 through 33 and 36.³ In its Motion to Compel, APWU claims that its discovery requests are permissible under Rule 25(a) and that its discovery requests are “relevant to this case and are necessary for rebuttal.”

¹ Interrogatories of the American Postal Workers Union, AFL-CIO to United States Postal Service (APWU/USPS-T6-28-37) (April 6, 2012).

² Objection of the United States Postal Service to American Postal Workers Union, AFL-CIO, Interrogatories (APWU/USPS-T6-28 through 37) (April 16, 2012) (hereinafter, “Objection”).

³ American Postal Workers Union, AFL-CIO, Motion to Compel Responses to APWU Interrogatories APWU/USPS-T6-28, 29, 31-33 and 36 (April 18, 2012) (hereinafter, “Motion to Compel”). APWU does not appear to challenge the Postal Service’s objections to interrogatories APWU/USPS-T6-30, 34, 35, and 37.

Discussion

Rule 25(a) states, in pertinent part,

[g]enerally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case.

In this docket, the Presiding Officer established February 24, 2012, as the date for the "[c]lose of discovery on the Postal Service's direct case."⁴ In its Objection, the Postal Service observed that the subject interrogatories, which were directed towards witness Martin (USPS-T-6), contain preambles that either directly quote witness Martin's testimony or relate to issues discussed in her direct testimony.⁵ For example, interrogatories APWU/USPS-T6-31 and 36 are focused on the Postal Service's direct case because they both seek to explore specific portions of witness Martin's direct testimony regarding truck utilization and the consolidation of mail volumes onto trucks with excess capacity.

Although interrogatories APWU/USPS-T6-32 and 33 do not quote specific portions of witness Martin's direct testimony, they are concerned with the same subject matters (*i.e.*, truck utilization and consolidation of mail volumes) as interrogatories APWU/USPS-T6-31 and 36. These subjects were discussed on page 9 of witness Martin's direct testimony (USPS-T-6) and in her responses to several interrogatories submitted by intervenors.⁶ Interrogatories APWU/USPS-T6-28 and 29 seek information on the number of PVS and HCR routes falling

⁴ Presiding Officer's Ruling Establishing Procedural Schedule, POR No. N2012-1/5 (January 12, 2012).

⁵ Even if interrogatories APWU/USPS-T6-28, 29, 31 through 33 and 36 had not been formally directed to witness Martin and were instead directed to the institution, the Postal Service would still object to these interrogatories because, as discussed herein, they deal substantively with the Postal Service's "direct case."

⁶ See Responses of witness Martin to interrogatories GCA/USPS-T6-1, NAPM/USPS-T6-1, NPMHU/USPS-T6-14-17, 19, and PR/USPS-T6-4.

within certain transportation categories and the average miles per route and cost per route for these routes. As such, they deal directly with matters that were addressed by witness Martin in her direct testimony and in her responses to interrogatories.⁷

The APWU and other intervenors had ample time prior to the February 24, 2012, to explore these subjects through written discovery. Having elected not to propound this discovery prior to the February 24 deadline or to explore these subjects with witness Martin at the March 22, 2012, hearing, APWU has still not explained why it should be permitted to explore these subject six weeks after the expiration of the deadline for discovery on the Postal Service's direct case.

Furthermore, APWU cannot rely on the exception embedded in Rule 25(a) to circumvent the February 24 deadline. In pertinent part, Rule 25(a) states,

An exception...shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

APWU claims that as long as a discovery request is "designed for the purpose of developing rebuttal testimony" a participant can avail itself of the Rule 25(a) exception. Motion to Compel at 2. However, APWU fails to explain how its standard, that the request be "designed for the purpose of developing rebuttal testimony," provides any limit on the nature or scope of discovery that may be legitimately submitted after the close of discovery on a participant. APWU

⁷ See USPS-T-6 at pages 3-5, 7, and 10. See also Responses of witness Martin to interrogatories GCA/USPS-T6-2 and NPMHU/USPS-T6-22.

provides no criteria that would enable the Commission to determine whether a discovery request, on its face, is “designed for the purpose of developing rebuttal testimony” or whether such a request is designed for some other purpose. In essence, APWU argues that the Commission’s determination regarding whether *any* of interrogatories APWU/USPS-T6-28, 29, 31 through 33 and 36 are designed for that purpose depends solely on whether APWU says it is so. However, if the basis for determining whether a particular discovery request is “designed for the purpose of developing rebuttal testimony” is the submitter’s stated intent, then APWU’s interpretation would swallow the rule; any participant would be free to initiate new lines of discovery seeking to explore the direct testimony of any Postal Service witness long after the deadline for written discovery and completion of oral cross-examination on that witness, as APWU has done here, by merely claiming -- notwithstanding the substance of the questions asked -- that its intent is to use the responses to develop rebuttal testimony. On their face, the questions objected to herein defy characterization as “only for the purpose of the development of rebuttal testimony” within the meaning of Rule 25(a). Surely, the Commission could not have intended for interpretation of Rule 25(a) to depend only on subjective declarations of intent by the interrogator, irrespective of the plain language of the questions at issue.

Additionally, the interrogatories that are the subject of APWU’s Motion to Compel do not qualify for the exception regardless of their purpose. Rule 25(a) states that “data” and “operating procedures” are examples of the kind of “information” that may be sought from the Postal Service after the close of

discovery on its direct case. Although the term “information” in this context arguably includes generic Postal Service information such as handbooks and manuals or data that reside in existing Postal Service databases and that can be provided in their native format, the term cannot reasonably be interpreted encompass the types of information sought by APWU/USPS-T6-31 and 36, which seek clarifications from witness Martin of certain portions of her direct testimony, or APWU/USPS-T6-28, 29, 32, and 33, which would require her to supplement that testimony by compiling and analyzing existing data, produce a result, and present that result in a manner specified by APWU. Specifically, interrogatories APWU/USPS-T6-28 and 29 would require witness Martin to obtain PVS records from over a hundred individual field offices and analyze the relevant data from those records to respond to the discovery request. This exercise would require a significant expenditure of her time and the resources within her control and would not be complete by the filing deadline for rebuttal testimony in this docket. APWU’s implicit interpretation of the term “information” in Rule 25(e) provides no limits on the nature or scope of discovery requests that are permissible under the exception, and also should be rejected.

The Postal Service submits that the subject interrogatories constitute discovery on the Postal Service’s direct case because they were directed towards Postal Service witness Martin and relate to specific portions of her direct testimony or subject matters discussed in that testimony. Additionally, the subject interrogatories do not qualify for the exception imbedded in Rule 25(a) because they do not constitute requests for “information” as that term is informed

by the plain language of the rule. Accordingly, these interrogatories are barred because they were submitted after the February 24 deadline and are manifestly not for the purpose of developing rebuttal testimony.

In addition to opposing APWU's interpretation of Rule 25(a), the Postal Service disagrees with APWU's assertions regarding the relevance of these interrogatories to this docket and its claim that it should be afforded to develop alternatives to the Postal Service's proposal.

If APWU is to be taken at its word, then APWU's interrogatories seek information that is not relevant to the Commission's task under section 3661 of advising whether the Postal Service's proposed service changes are consistent with the applicable policies of Title 39, U.S. Code. APWU asserts that the "information sought by interrogatories APWU/USPS-T6-28 and 29 would allow the APWU to challenge the methodologies and assumptions used regarding the costs of PVS relative to HCRs."⁸ Motion to Compel at 3. However, assuming arguendo that the information sought would enable APWU to undertake this analysis, the Postal Service observes that the purpose of this docket is elicit an opinion regarding whether, as matter of statutory policy, cost savings are an appropriate motivation for the pursuit of service changes under section 3661 of Title 39, U.S. Code. Contrary to the apparent expectation of APWU, this is a question that can be answered in the absence of absolutely complete and totally perfect information regarding the costs of PVS and HCR transportation and whether one form of transportation is more cost-effective than the other. The

⁸ APWU makes the same claim with respect to APWU/USPS-T6-31 through 33 and 36. Motion to Compel at 3.

Commission should recognize that APWU's interrogatories are not designed to elicit information that will aid the Commission its opinion regarding the central issue in this case.

APWU's claim that the information sought by APWU/USPS-T6-31 through 33 and 36 is necessary for the development of "alternatives to the current and expected USPS vehicle fleet arrangement" is also irrelevant. Motion to Compel at 3 through 4. Section 3661 provides an avenue for the Postal Service to request an advisory opinion from the Commission when Postal Service management "determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." It further requires that the Postal Service submit its service change proposal within a reasonable amount of time prior to the effective date of the proposal, in order for the Commission to exercise its authority to provide an opportunity for a hearing on that proposal. However, it is not intended to create a forum for the adversarial development of alternative, competing, or conflicting service change proposals or plans for organizing postal resources by different parties, or for a subsequent recommendation by the Commission regarding which alternatives it would implement if it were authorized to determine which service change to pursue or manage postal operations. In this regard, section 3661 stands in stark contrast to former section 3622(a), which authorized the Commission, in response to a Postal Service request, to recommend a mix of rates to satisfy the Postal Service's revenue requirement, and permitted the Postal Service to accompany such request with "suggestions for rate

adjustments as it deemed suitable.”

Accordingly, it would run counter to the intent of the statute for the Commission to permit in a section 3661 proceeding discovery that imposes an unnecessary burden on the Postal Service for the purpose of permitting parties to imagine and submit alternative service changes and operational management plans for Commission review. Otherwise, there would be no limit to the scope of discovery in a section 3661 proceeding.

Conclusion

The Postal Service endeavors to provide participants in the present docket with information relevant to the service changes it plans to implement in order to permit a fair examination of whether those changes would satisfy applicable statutory criteria. The record in this docket bears ample evidence that the Postal Service has refrained from objecting to every request for information irrelevant to its request. Such forbearance has minimized motions practice and the need for the Commission to step forward to resolve disputes. However, there are limits that must be managed by the Commission if the purposes of section 3661 are to be respected and served.

Accordingly, the Motion to Compel should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

Matthew J. Connolly
Attorney

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-8582; Fax -5418
matthew.j.connolly@usps.gov
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